

United States District Court  
for the District of N.H.

Petitioner Dominic Ali

v.

Defendant Edward Reilly N.H. prison  
Warden

Civil NO: 12-cv-364-SM

Plaintiff's Objection to the Court report and  
recommendation and defendant Summary Judgment.

NOW COMES, Dominic Ali, sui juris respectfully  
requests this Honorable Court to grant this motion  
for the following reason states below;

Before this Court are Dominic Ali Original  
Complaint and the addenda thereto doc  
NOS 1 and (a-8) construed together as the  
complaint in this action for all purposes.

petitioner asserts claims of violation of  
the Religious land use and institutionalized  
person Act (RLUIPA), 42 U.S.C. 2000 cc to  
2000 cc-5, and his Federal and State  
Constitutional Rights.



After a report and recommendation date June 3, 2013, issue by the Honorable Court (McCauffery, L) The petitioner was allowed to go forward with his claims that included:

1) The failure of Hoyt and NCF warden Reilly to provide Islamic services at the NCF, and their reliance on PRD 7-17, has violated Ali's: (a) First Amendment right to freely exercise his religion; and (b) rights under (RLUPA).

2) Hoyt's failure to ensure that Ali received healthy food during Ramadan has violated Ali's: (a) First Amendment right to freely exercise his religion; (b) right under (RLUPA); and (c) Fourteenth Amendment right to equal protection.

3) Defendant Correction Officer at the NCF, Watson, Massy, Berwick, and Warden Reilly violated Ali's: (a) First Amendment right to freely exercise his religion; and (b) his rights under (RLUPA), by denying Ali the ability to fast for Ramadan.



5) Defendants' conduct violated Ali's equal protection and religious freedom rights under the N.H. Constitution.

Doc. NO. 9, at 5-6.

Petitioner's initial Complaint is under the Civil Rights Act, filed on Sept 26, 2012, See; (Doc NO 1) and the Amended Complaint filed on Jan 24, 2013. See; (Doc 8) with this Court.

The Bureau of Prison Policy requires that weekly congregation for religious services be available for all inmates except those detained in the special housing units.

PP.D 7-17, itself states that "all inmates shall have access to religious resources, services, instruction or counseling on a voluntary basis - The institution will provide all inmates with the opportunity to pursue any recognized belief or practice. Subject to the restriction of their custody level" and the institution shall extend to all inmates the greatest amount of freedom and opportunity



to pursue any recognized religious belief or practice." it includes specific procedures by which inmates could have access to religious publication, religious diets, religious apparel, and personal and group religious items.

### Jum'ah Services

Jum'ah Services is the central religious ceremony of the Islamic religion. Jum'ah is commanded by the Holy Quran and the services must be held collectively by leadership of an Imam and must be held every Friday.

The denial of Jum'ah Services for substantial amount of time violates the Free Exercise clause of the First Amendment rights as well as the provision of (RLUIPA).

The petitioner states that deprivation of Muslims inmates for group prayer was not justified by legitimate penological interest or compelling under (RLUIPA).



Defendant Chaplain Hoyt supervise inmates led Jum'ah services for approximately two years and he also provide the Native American inmates with reasonable opportunity to pursue their faith. Defendant Hoyt admits that Jum'ah services is that central religious ceremony of the Islamic religion and that Jum'ah services is held weekly. Defendant Hoyt also have sufficient personal knowledge that Jum'ah must be performed in congregation and that Jum'ah is obligatory and it cannot be made up. Providing NCF inmates with Jum'ah services on tape, its an insult. Some inmates have no access to a T.V. An Imam provide Jum'ah services once a month at the Concord Facility. Jum'ah services is every Friday of the four weeks of each months. The defendant Hoyt was never interested in providing Jum'ah services during Mr. Ali's incarceration. Mr. Ali is not considering a tape recorded video as Jum'ah services and neither do any NCF Muslims.

The NCF policies with respect to inmates gathering for religious services and requiring an external volunteer like defendant Hoyt as  
 5 of 20 he did for two years is not reasonable related



to legitimate penological interest. The Supreme Court made clear in *Olone* and *Thornburgh*, that "the Court must examine whether an inmate has alternative means of practicing his or her religion generally, not whether an inmate has alternative means of engaging in the particular practice in question." (Quotation and citation omitted). Watching the Jumu'ah services in the Housing units or cells, is like watching a game during a football game, its too loud and some inmates are disrespectful, and can start some issues. Video recorded Jumu'ah services is not alternative means. See; *Thornt v. A Religious Office*, 895 F.2d 104 (2d Cir. 1990).

### Ramadan

Ramadan is a period during which Muslims refrain from eating between sunrise and sunset, for a period of approximately 30 days. Under certain circumstances Ramadan may be extended to 40 days. Especially when the NCF during Ramadan served fasting inmates with nutritionally, slight smell and slight offensive taste meals - see; Exhibit (A1). This is been done meticulously every Ramadan and every other 6 of 20 day of the week. Mr. Ali's Complaint about see; *Hoss v. Blackledge*, 477 F.2d 616 (4th Cir 1972)



the unhealthy Ramadan food that echo other claims filed in this Court by other muslims inmates and as well as (Groups) see; Krapp v. Kersch, NO. 11-cv-491-PB, 2012 -

Muslim inmates observing Ramadan are provided with less than three meals, it could be, meals with offensive, spoil smell, no cheese, spoil milk sometimes, uncook hotdogs or Beans - cold slices of Bread that we have to throw away everyday, when the NCF takes away the, Baked eggs, Flap Jacks, Banana, Orange Juice, Outments, Peanut Butter, pizza, Excommable eggs, and Juice packet. Any experts would testify that those are highly nutritionally meals - were Concord prison provide to fasting inmates each year. See; Joan Lammie v. Warden State Prison, States in part "Every inmate is entitle to 3 whole-some and nutritious meals per day served with proper eating and drinking units. All inmates regardless of their status, will be served the same quality of food in a quantity sufficient to meet their nutritional need. Availability of special diets will not be dependant upon custodial or disciplinary status. Food shall be stored, prepared and served in accordance with the N.H. Sanitary food code and other standard established by the N.H. Depart of public Health."



NCF inmate observing Ramadan are place on a Ramadan Fasting list. Every day they receive three-meals. On or about August 13, 2012, location NCF, cell 13 Fox, Co S. Watson and cpl. D. Anderson conducted a so called shake down or harassment of inmates and destruction personal property. Mr. Ali was fasting that day, when Co S. Watson took all of Ali's food such milk, sugar and coffee cake that was for breakfast. Mr. Ali had an argument with Co. S. Watson about his breakfast without asking Mr. Ali and did not allow Mr. Ali to explain why he possess these meals, that's disciplinary action or write up. (44B) After the argument Co. S. Watson, Mr. Ali was called to the office to get his Ramadan meals back. Mr. Ali found out that his meals was put in a trash bagged with dirty property he took from the cell. The issue of the shake down is that Mr. Ali cell mate was tugged from the units for some reason unknown to Mr. Ali, Co Watson ask Mr. Ali if he knew why his cellmate left the units. When Mr. Ali offer no reason or why, because Mr. Ali at that time was at the yard outside the units. Co. Watson respond, is to refrain with any



harrassment, such as shut down and destruction of property. During Ramadan inmate muslims could fast for 30 days or 40 days, is commanded by the Quran not the NCF bulletin which is not approve by any Imam or any muslim.

Mr. Ali was stressing and had emotional problem with the NCF harassment the other day and the lack of nutritional food decided not to fast that day, knowing that he has extra 10 days to recover. Paragraph (9) of the defendant Amended Answer Filed August 1, 2013, the defendant states that "he lack sufficient personal knowledge to either admit or deny the allegation". But he has the authority to write bulletin that in violation of the Quran and Mr. Ali's

Constitutional Rights- During Ramadan of 2012, CO. S. Watson saw Mr. Ali going to the chow hall for a breakfast, which is Outments, Peanut butter and milks - which is fasting inmates don't get. Co. S. Watson disrespectfully ask Mr. Ali to report to Lt. Masse. Mr. Ali explained the reason of why he's not fasting but was told that he was been taken from the Ramadan list before even they talk to the Chaplain Hoyt. Mr. Ali was interrogated



by L.T. Mussy and Berwick, "How many time muslims pray a day and whats is Mr. Ali's name means in islam" Mr. Ali asked these L.T.s to stop their interrogation and provid him with a grievance form for the reason they removed him from the Ramadan list, without first reporting to a chaplain whos incompetent hem self. Writin bias rules or bulletin that is in conflict with the Quran is violation of Mr. Ali's First Amendment Rights (Right) and Part (1) Art 5. Mr. Ali decided not to fast the day he was question about his faith by correction officer who're willing to harm <sup>do</sup> harm then good. This is not about extra meals, because Mr. Ali was not writin up, even though its a disciplinary offense by the "Independent of the Rules".

### NCF Policy and Procedure (3 steps)

- 1) Inmate request sllp
- 2) Grievance
- 3) Grievance Form directed to the Commissioner of the "Doc".

See; Whitley v. Hunt, 158 F.3d 882 (5th cir. 1998) also, Castell v. Vande, 167 Wis. 2d 1 (N.W.2d wis-1992). Garrett v. Hawk, 129 F.3d 1263 (10th cir. 1997)



Were the 5th Cir recognized such a per se rule, reasoning that its senseless to force a prisoner to engage in the "empty formality" of petitioning the prison administrative process for a form of relief that it cannot provide. Had Mr. Ali submitted a grievance form seeking monetary relief the grievance would not simply have been denied, but rejected and returned unanswered as improper subject matter for administrative review. That's happen all the time were the NCF excuses, "we lost your mail" in order not to returned or answer Mr. Ali's Complaint. its senseless, where administrative action by the NCF afford Mr. Ali neither meaningful review nor appropriate remedy. its all fun and games to the NCF staffs. Mr. Ali request a grievance form and he was told by L.T. Massy and Berwick that "you have no ground for grievance" after he was told, has been removed from Ramadan list, before they reported Mr. Ali to the Chaplain. The Chaplain comes to his job at NCF at (2:00 PM.) Two PM. every day, Mr. Ali was told that his been removed for the Ramadan at 8:00 AM, the list. And that's a fact.

11/20.



Chaplain Hoyt is a paid volunteer who works for the NCF. He does what the NCF wants and cover for them when ever they are in problem. Association Section of criminal Justice has observed; "the real problem comes not with facilities for religious services, but with attempt of prison Officials to prevent and restrict certain religions movement within the prison". Chief among these movement has been the black Muslims. See; Sostre v. McGinnis, 336 F.2d 906, (2d cir. 1964) also, Pierce v. Varnelle, 293 F.2d 233 (2d cir. 1961).

with respect to the Muslims services, Mr. Ali wrote a complain to the New Hampshire Department of Justice about issues not getting legal mails and Muslims services, The defendant never respond back. The (DoJ) is the respondent for the NCF. As a matter of fact, Mr. Luis Silva # 91105, an NCF inmate who at the sometime was Mr. Ali cellmate and a witness in this case. Mr. Ali and inmate Luis Silva wrote complain to the (DoJ) Office about muslims services and not receiving mail, the (DoJ) ~~forward~~ never respond to Mr. Ali's request, or 12 of 20 complain, But forwarded Silva's complain to the N.H. Doc security and training, Mr. Kench. See; EXHIBIT A6) to the US. Dept of Justice, about



Muslims Service and Issues about rights.

As to the attached one exhibit within the motion for Summary Judgment of Mr. Ali. its to prove the lie that the NCF defendant responded states that "They lack of sufficient personal knowledge or allegation regarding Muslim Services and Complaint by inmate Luis Silva and that they never told inmate Silva that they are unsuccessful in finding an Imam to facilitate Muslim Services and that he could practice his religion to the best of his abilities within the guideline imposed" see; Bryant v. McGinnis, 463 F. Supp, 373 (W.D.N.Y. 1978).

Mr. Ali and inmate Silva have always in good faith wants to resolve these issues about Muslim services without using the Judicial process. That's what Islam is about. But we notice the bad-faith pattern by Prison staff. EXCUSES of lost of request slip and Grievance form in the mail, and the Cats and mouse games they play with prisoners every day. Silva was an inmate from the State of New York, convicted by this State, with few months to serve and the NCF knew that he had no chance in challenging these issues in the Court of Law, just like

other cases filed in this Court. The NCF knew Mr. Ali is serious about his religion



after he was disrespected by CO. S. Watson  
 on August 10, 2012, during the shut down and  
 destruction of inmates property. And of course,  
 the NCF Warden never response to that  
 issue like always, the Warden picks and choose  
 what he want to response to, covering up what  
 his staff did to Mr. Ali three days latter when  
 they throw his Ramadan food in a trash pags  
 and its no longer healthy food to eat, But  
 responded to a NCF operational Bulletin that is  
 bias and prejudice and is not center with the  
 Islamic law. Mr. Ali could have been denied his  
 3rd meal when he picks up his fasting fees. As  
 simple as that, not automatically removing some-  
 one from the Ramadan feed list and should  
 go back to normal feed for the Remainder  
 of Ramadan. This is a discriminatory intent to  
 deny Muslims of their rights and retaliation, B-5  
 (3405) to Mr. Ali's litigation actions. Removing Mr. Ali  
 from the Ramadan list was a retaliation by  
 Co. S. Watson because the NCF had an informant  
 by the name Ramos Jose # 87914 working with  
 the Department of Justice of the State of see (EX A2)  
 New Hampshire, living with Mr. Ali block F, cell  
 14 of 20 #13. This is not the first time the "Doc" retaliate  
 against Mr. Ali, were they transfer <sup>him</sup> from facility  
 see: Bridge v. Russell, 757 F.2d 1155 (11th cir. 1985)



to Facility, that's the common methods of retaliatory punishment within the prison system to prevent further grievance filings and lawsuits, in violation of Mr. Ali's First Amendment rights, and its two cases with this Court, see; Ali v. Berry and Reilly, N.H. State Prison Warden's.

The Supreme Court recently help ease the legal battle for prisoner filing retaliation claim with its decision in the case of Crawford v. Britton, 523 U.S. 574 (1998). were prisoner filed a suit under 42 U.S.C. 1983, alleging that prison officials transferred him to another prison and his property shipped elsewhere in retaliation for the exercise of his First Amendment rights. The Court of appeals determined that in an unconstitutional motive case (such as retaliation), the plaintiff must establish the defendant's motive by "clear and convincing evidence". The Supreme Court, however, states that this heightened burden of proof was incorrect and unnecessary to defeat a summary judgment motion by defendants. The Supreme Court vacated the judgment of the Court of appeals and remanded for further proceeding. Section 1983 provides a cause of action against those who, acting under color of State Law, violate Federal Law, 42 U.S.C. 1983



see; Rodriguez-Cecilo v. Garcia, 115 F.3d 50, (1st cir. 1997). in violation of Mr. Ali's First Amendment Free Exercise of the Religion Land use and Institutionalized person act (RLUIPA) 5 and his Federal and state Constitutional Rights.

Exhaustion of administrative remedies under the PLRA is not jurisdictional, see Santiago, 2000 WL 223830, at 7 n5, But rather is an affirmative defense. see; Jenkins v. Haubert, 179 F.3d 19, (2d cir. 1999). German v. Penn, 88 F. Supp. 2d U.S. Dist. (216. S.D.Y. ~~DOE~~ 2000)

Mr. Ali seeking monetary relief by grievance form process is improper subject matter for administrative review. Administrative by the NCF afford neither meaningful review nor appropriate remedy. As this Court notice, the NCF warden left Co. 3 Watson insult unanswered and the monetary relief could have been rejected or otherwise been lost in the prison mail as ~~was~~ always. (RLUIPA) address as much more specific problems than the Habeas statutes and within that specific area, erects no exhaustion barrier and gives this Court the power to remedy wrongs. NCF warden and "Doc" commissioner offer neither meaningful review nor appropriate, even if Mr. Ali "regues slip"



or "grieve" them for Muslim Services. Exhibit C of Mr. Ali's motion for Summary Judgment, inmate Luis Silva directs his letter to the commissioner complaining in part about Muslim Services, the commissioner never respond to complain and he will never respond, and it's always been like that, the 'Doc' wants the upper hands in everything. they know no cases filed against the Doc under Section 1983 will <sup>not</sup> pass without exhaustion of administrative remedies in this Court as a matter of law. On August 22, 2007, inmate Dennis R. Simpson II demanded Muslim Services, as well as inmates Knapp, Silva and now with the pressure of my Complaint in this Court the NCF still don't Muslim Services. see: Greene v. Secretary of Public Safety and Correction Services, 68 Md. App 147 A.2d (Md. App. 1986). The Supreme Court has acknowledged that credibility judgment in prison disciplinary hearing are often between inmates and the committees co-workers and that they "thus are under obvious pressure to resolve a disciplinary dispute in favor of the institution and their fellow employee --- it's the old situational problem of the relationship that hardly is conducive to a truly adjudicatory performance". In good faith, Mr. Ali have pursued his administrative remedies, Page 10 of the state defendant answer paragraph 14, Defendant



Chaplain Hoyt admits that on October, 2012, he arranged for an Imam associated with the Islamic Society of Greater Manchester to come to the prison to speak with the Muslim inmates on Sunday. And the reason why because Mr. Ali has demanded Muslim service such as Jumma from the Chaplain, and the lawsuit motivated him to do so, because there is no more talking to him. See; *Lewis v. Meyer*, 630 F. Supp. 937 (E.D. Wis. 1986). Even though Mr. Ali filed a Grievance with the NCF Warden there is nothing he could do because the grievance procedure does not meet all the requirement or the remedy Mr. Ali is seeking, money/damages. The NCF grievance system whether to the Warden or the Office of the Commissioner because the Commissioner never responded him self even though the grievance states "commissioner's action" is not fair and effective. The NCF warden knew that Mr. Ali is a Muslim, because on August 15, 2012, via request slip, Mr. Ali requested him to allow Islamic material thru property. On August 13, 2012, Mr. Ali filed a request slip complaining Corrections Officer insult during Ramadan in which he never response to, see; Defendant Exhibit 12, 201 (G-1) and as well as Mr. Ali's grievance form filed on 8/15/2012, in which he never advise Mr. Ali,



that he may conduct an investigation of the allegation that happen on August 10, 2012.

### The Fast of Ramadan

" Ramadan is the month wherein the Quran was revealed for the guidance of mankind and to serve as the criterion (of right and wrong).

Whosoever of you is present in this month shall fast it, and whosoever is sick or on a journey shall fast an equal number of days later - On" in part.

The NCF operational Bulletin is in violation of Mr. Ali's Constitutional Rights. By law, the NCF have no rights "automatically" removing Mr. Ali for the Ramadan list or Fees. Automatically means that they don't have to speak with the Chaplain to remove Mr. Ali from the fasting fees. And that's what they did, Lt. Mossy and Bernick. And they denied these violation. With issues of filing a request slip or grievance to the Commissioner after the warden piggy back his stuff action, Mr. Ali knew is no due process by or come from the Commissioner. Because he does what the warden did. Failure to take corrective actions, forcing Mr. Ali to engage in the empty formality and relief that the NCF cannot provide, monetary relief. Dismissing Mr. Ali's claims with prejudice its much remedy. Mr. Ali object to the defendant State Summary Judgment for those



reasons- Conclusion

For the reason the petitioner states and prays that;

1) Deny the State defendant motion for summary judgment;

2) Grant the petitioner motion for summary judgment as a matter of law and for further other relief as just and equitable.

### Certificate of Service

I, Dominic Ali hereby certify under penalty of perjury that a copy of this motion has been forwarded to State Attorney General's Office, this Date 10/21, 2013.

10/21/2013  
Paul Durrell

Dominic Ali 81829  
138 East Milan Rd

Berlin, NH 03570

cc: file.

